The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Criminal and Civil Justice

BILL:	CS/SB 644
INTRODUCER:	Judiciary Committee and Senator Grall
SUBJECT:	Attorney Fees, Suit Money, and Costs
DATE:	February 17, 2026
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.	Kolich	Harkness	ACJ	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 644 changes provisions regarding attorney fees and costs that may be awarded to a party in a family law case or a paternity case and are payable by the other party, to provide that:

- A court may award attorney fees retroactively and prospectively as equity requires.
- A court may award attorney fees as a sanction for vexatious behavior.
- Attorney fees incurred to pursue appellate proceedings may be awarded.
- Attorney fees incurred in proving the amount claimed in the attorney fee dispute may also be charged to the responsible party.
- Where an attorney may directly pursue collection of his or her attorney fee award from the opposing party who is responsible for the award, payment of support owed to the obligee has priority over payment of the fee award.

The bill does not have a fiscal impact on state revenues or expenditures. See Section V., Fiscal Impact Statement.

The bill is effective upon becoming law.

II. Present Situation:

Introduction

The general rule in this country, the so-called "American Rule" is that each party must pay its own attorney's fees. The parties to a contract may, and commonly do, agree that the prevailing party may also collect attorney fees. Where one is enforcing a constitutional or statutory right, however, attorney fees are only reimbursed if the text creating that right specifically provides for attorney fees or one of the limited common law exceptions apply. The principal grounds under which the American common law would allow attorney's fees to be awarded are the "bad faith" and "common fund" theories. The "bad faith" theory allows an award where a party has willfully disobeyed a court order or has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Under the "common fund" theory, a court may award attorney's fees to a party whose legal action creates or preserves a fund of money, or obtains a benefit, for others as well as itself.[1]

Among the numerous state statutes that may support an award of attorney fees are statutes awarding attorney fees in family law actions (divorce, alimony, child support, timesharing) as provided in s. 61.16, F.S., and paternity actions as provided in s. 742.045, F.S.

Civil Litigation in the State Court System – In General

Trial Courts

Section 21 of the State Constitution's Declaration of Rights provides that "the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay." To that end, the State Constitution provides for a two-tier trial court system comprised of 67 county courts – that is, one county court for each of Florida's 67 counties – and 20 circuit courts, each of which serves at least one county.[2] The county courts, as courts of limited jurisdiction established by statute, hear matters including traffic offenses, landlord-tenant disputes, small claims cases up to $8,000, misdemeanor criminal matters, local government ordinance violations, and monetary disputes up to $50,000.[3] The circuit courts, meanwhile, as courts of general jurisdiction, hear all matters not within the county courts' jurisdiction, including dissolution of marriage and other "family law" proceedings, felony criminal matters, juvenile delinquency and dependency proceedings, probate proceedings, guardianship matters, and monetary disputes over $50,000.[4]

Florida law establishes various causes of action for which a person may sue, but it is the Florida Rules of Civil Procedure, promulgated by the Florida Supreme Court, which govern the procedural requirements for such lawsuits. Under these Rules, lawsuits in Florida's state court system begin with one party to a dispute (known as the "plaintiff" or the "petitioner") filing a

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[1] U.S. Dept. of Justice, *220. Attorney's Fees*, Civil Resource Manual, https://www.justice.gov/archives/jm/civil-resource-manual-220-attorneys-fees.
[2] Article V, ss. 5 and 6, Fla. Const.
[3] Office of the State Courts Administrator, *Trial Courts – County,* https://www.flcourts.gov/Courts-System/Court-Structure/Trial-Courts-County (last visited Feb. 15, 2026).
[4] Office of the State Courts Administrator, *Trial Courts - Circuit*, https://www.flcourts.gov/Courts-System/Court-Structure/Trial-Courts-Circuit (last visited Feb. 15, 2026).

complaint with the clerk of the court for the trial court with jurisdiction over the matter, after meeting any pre-suit requirements. Once served with the complaint, the person sued (known as the "defendant" or the "respondent") has the right to file a response to the complaint and must serve such response on the plaintiff. Once the pleadings are filed, the parties begin the "discovery" phase – that is, the phase during which both parties exchange information and evidence and depose witnesses[5] – and either party may file pre-trial motions asking the court to make a ruling on some aspect of the case. Ultimately, if the parties do not reach a settlement,[6] the lawsuit may then proceed to trial; such trials may be before a jury, in which case the jury determines questions of fact[7] while the judge determines questions of law, or else such trials may be "bench trials" – that is, trials solely before a judge, in which case the judge determines both questions of fact and of law.[8] In either case, at the trial's conclusion, the judge issues a final judgment,[9] and may also issue orders on any post-trial motions filed by the parties, which may include motions for attorney fees and costs.[10]

District Courts of Appeal

Article V, s. 4 of the State Constitution guarantees litigants the right to appeal final judgments and orders issued by the state's trial courts to one of Florida's District Courts of Appeal ("DCA") when such judgments or orders are not directly appealable to the Florida Supreme Court or to a circuit court; given that the State Constitution and Florida law limit the appellate jurisdiction of the Florida Supreme Court and of the circuit courts, most appeals in state court go from the trial court to a DCA.[11] Currently, Florida has six DCAs – that is, one DCA serving each of Florida's six appellate districts.[12]

An appeal, irrespective of which court takes it up, is not an opportunity for the parties to reargue the facts of a case; instead, the parties must rely on the factual record established by the trial court, and the party appealing the trial court's decision (known as the "appellant") may only argue that the trial court made a legal error, which error prejudiced the outcome of the case.[13]

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[5] Legal Information Institute, Discovery, https://www.law.cornell.edu/wex/discovery (last visited Feb. 15, 2026).
[6] A "settlement" is an agreement that ends a dispute and results in voluntary dismissal of the related lawsuit. Legal Information Institute, *Settlement*, https://www.law.cornell.edu/wex/settlement (last visited Feb. 15, 2026).
[7] "Questions of fact" are those questions answered by the evidence presented. To determine questions of fact, the "factfinder," whether a jury or a judge, must weigh the strength of the documentary evidence presented and the credibility of all witnesses giving testimony. Legal Information Institute, *Questions of Fact*, https://www.law.cornell.edu/wex/question_of_fact (last visited Feb. 15, 2026).
[8] "Questions of law" are those questions relating to the identification, interpretation, and application of the relevant laws. Legal Information Institute, *Questions of Law*, https://www.law.cornell.edu/wex/question_of_law (last visited Feb. 15, 2026).
[9] A "final judgment" is the last decision from a court, which decision resolves all issues in dispute and settles the parties' rights with respect to those issues. Generally speaking, the only issues which may remain after the issuance of a final judgment include decisions on judgment enforcement, entitlement to attorney fees and costs, and whether to appeal the judgment. Legal Information Institute, *Final Judgment*, https://www.law.cornell.edu/wex/final_judgment (last visited Feb. 15, 2026).
[10] *Stockman v. Downs*, 573 So. 2d 835, 838 (Fla. 1991).
[11] Death penalty sentences imposed by trial courts are directly appealable to the Florida Supreme Court. The circuit courts have limited appellate jurisdiction as provided for by general law; however, the Legislature largely eliminated the circuit court's authority to hear appeals of county court matters as of January 1, 2021. Art. V, ss. 3 and 5, Fla. Const.; Ch. 2020-61, Laws of Fla.
[12] Art. V, s. 4, Fla. Const.; s. 35.01, F.S.
[13] Appealable legal errors include procedural violations, the improper admission of or refusal to admit evidence, and the incorrect application of law to the facts of the case.

Furthermore, the appellant generally must have "preserved" the trial court's error, by making a specific, contemporaneous objection to the trial court;[14] appellate courts generally do not address new legal issues raised for the first time on appeal, as, under Florida's civil litigation scheme, the trial courts are the principal arbiter of disputes while the appellate courts are courts of review.[15]

Chapter 59, F.S., provides a general framework for appellate proceedings in state courts; however, state court appeals are more specifically governed by the Florida Rules of Appellate Procedure, promulgated by the Florida Supreme Court. Such rules address, among other things, the timeframes for commencing an appeal (typically 30 days from the rendition of the judgment or order to be reviewed) and for filing briefs,[16] as well as procedures specific to the various types of appeals. Once an appeal commences, a three-judge panel considers the matter and renders a decision, for which a concurrence of two judges is necessary.[17] If the panel believes that the trial court ruled correctly, or at least that the trial court did not make a prejudicial legal error, the DCA will affirm the trial court's ruling. Alternatively, if the panel believes that the trial court made a prejudicial legal error, the DCA may reverse the trial court's ruling and "remand" – that is, send – the case back to the trial court for further action.[18]

Florida Supreme Court

Article V, s. 3 of the State Constitution establishes the Florida Supreme Court's jurisdiction, which, in most instances, is "discretionary." In other words, the Court may generally decide whether or not to take up a particular matter on appeal.[19] Because of this, most appeals do not reach the Florida Supreme Court and are instead resolved by a DCA. Matters falling into the Florida Supreme Court's discretionary jurisdiction include, among other matters, any DCA

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[14] *Castor v. State*, 365 So. 2d 701 (Fla. 1978).

[15] "Fundamental error" – that is, errors that "reach down into the validity of the trial itself" and could potentially erode the public's trust in the justice system – may generally be challenged on appeal absent a contemporaneous objection. In civil cases, courts have found the award of judgments based on non-existent rights and lack of any foundation to be fundamental error, as well as improper, harmful, and totally incurable closing arguments that so damage a trial's fairness as to require a new trial (such as closing arguments that appeal to racial, ethnic, or religious prejudices). *Murphy v. International Robotics Systems, Inc.*, 766 So. 2d 1010 (Fla. 2000).

[16] A "brief" is a written legal argument filed by a party to an appeal to explain his or her legal position. In a typical appeal, the appellant files an "initial brief" to explain to the appellate court why the trial court's decision was wrong and why the appellate court should, therefore, grant the appellant relief; the appellee thereafter files an "answer brief" to provide the appellate court with legal and factual support to uphold the trial court's decision. Legal Information Institute, *Brief*, https://www.law.cornell.edu/wex/brief (last visited Feb. 15, 2026).

[17] In extraordinary circumstances, a DCA may, by majority vote of all active judges on the court, order that a proceeding be determined *en banc* – that is, the panel will consist not of three judges but of all judges in regular, active service on the court who are not disqualified from hearing the appeal; *en banc* hearings typically occur when the case is of exceptional importance or there is a need to maintain uniformity in the court's decisions, such as when two appellate panels reach conflicting decisions when presented with similar facts. A party to the appeal may also request a rehearing *en banc* after the initial panel issues a ruling but must state with specificity those points of law or fact that the party believes the panel overlooked or misapprehended. Art. V, s. 4, Fla. Const.; Fla. R. App. P. 35.

[18] The appellate court may, depending on the posture of the case, remand the case back to the trial court for actions including correcting an order, holding a rehearing on a motion, or conducting an entirely new trial.

[19] As previously mentioned, the Florida Supreme Court has mandatory jurisdiction over, and therefore must hear, all death penalty sentences imposed by trial courts. The Court also has mandatory jurisdiction over all DCA decisions declaring a state statute or state constitution provision invalid, over all trial court rulings upholding local government bonds, and over all state utility regulator decisions concerning rates or service. Furthermore, the Florida Supreme Court has no jurisdiction over, and therefore may not hear, decisions that were *per curium affirmed* by the DCA, as there is no written opinion issued with such decisions which the Court could review. Art. V, s. 3, Fla. Const.; *Jenkins v. State,* 385 So. 2d 1356 (Fla. 1980).

decision that expressly and directly conflicts with another DCA's decision on the same question of law – that is, when the DCAs are "split."[20] When a split occurs, a DCA may choose to "certify conflict" to the Florida Supreme Court by issuing a written opinion expressly attesting to the conflict. This certification then triggers the Florida Supreme Court's discretionary jurisdiction, giving the Court the option to review and resolve the conflict, and to thereby ensure uniformity in the interpretation and application of Florida law across the state.[21]

Attorney Fees and Costs in Family Law Disputes

The traditional "English rule" on attorney fees entitled a prevailing party in a lawsuit to recover his or her attorney fees and costs from the losing party as a matter of right. However, Florida and a majority of other United States jurisdictions have adopted the "American rule" on attorney fees, under which each party bears its own attorney fees and costs unless a contract or a "fee-shifting statute" provides a specific entitlement to such fees and costs.

In Florida, several fee-shifting statutes create a "one-way" attorney fee structure, typically entitling a specific type of prevailing plaintiff to recover his or her attorney fees and costs from a losing respondent.[22] Certain other fee-shifting statutes create a "two-way" attorney fee structure, entitling the prevailing party in a lawsuit to recover his or her attorney fees and costs from the losing party.[23]

Equity Standard for Fee Awards

Whether a fee-shifting statute is "one-way" or "two-way," courts typically determine the entitlement to attorney fees at the relevant proceeding's conclusion and award the amount owed for completed work; this makes sense when considering that, in most instances, a party or a plaintiff must "prevail" before a court may award attorney fees. However, in certain "family law"[24] matters, the standard for an attorney fee award is neither "prevailing plaintiff" nor "prevailing party," but rather an equity standard, under which courts generally consider the parties' relative financial resources when determining whether to award attorney fees – that is, the courts generally consider one party's financial need and the other party's ability to pay. Section 61.16, F.S. (governing dissolution of marriage, support, and time-sharing proceedings under ch. 61, F.S.) and s. 742.045, F.S. (governing determination of parentage proceedings under ch. 742, F.S.) establish such an equity standard.

[20] Other matters within the Florida Supreme Court's discretionary jurisdiction include a DCA decision that expressly: construes the State or Federal Constitution; declares a state statute valid; passes upon a question of great public importance; or affects a class of constitutional or state officers. Art. V, s. 3 Fla. Const.
[21] *State v. Vickery*, 961 So. 2d 309 (Fla. 2007).
[22] *See, e.g.,* s. 400.023, F.S. (nursing home resident); s. 440.34, F.S. (claimant in a workers' compensation case in certain situations); s. 501.2105, F.S. (plaintiff in specified FDUTPA actions); and s. 790.33, F.S. (plaintiff in a suit to enforce his or her firearm rights).
[23] *See, e.g.*, s. 713.29, F.S. (prevailing party in action to enforce a lien); s. 83.48, F.S. (prevailing party in action to enforce rental agreement or the Florida Residential Landlord and Tenant Act).
[24] "Family law" is a collective term for a wide range of legal matters revolving around familial or otherwise domestic relationships. Such legal matters include marriages, dissolutions of marriage (or "divorce"), time-sharing (once known as "child custody"), spousal and child support, adoption, determination of parentage (or "paternity actions"), and domestic violence. Legal Information Institute, *Family Law*, https://www.law.cornell.edu/wex/family_law (last visited Feb. 15, 2026).

Prospective and Retroactive Attorney Fee Awards

In proceedings under either chs. 61 or 742, F.S., courts may award attorney fees prospectively – that is, for future legal work – where one party demonstrates his or her need and the other party's ability to pay.[25] This ensures that, even where there is a marked income disparity between the parties to a family law dispute, each party has access to legal representation for the proceeding's duration.[26] Where equity so requires, courts have also awarded attorney fees in family law matters retroactively – that is, for legal expenses already incurred – either as a form of equitable reimbursement or as a sanction. However, in 2024, the First DCA split from the other DCAs, holding that s. 61.16, F.S., as currently written, only contemplates prospective attorney fee awards and, therefore, does not authorize retroactive attorney fee awards.[27] In support of its position, the court noted that s. 61.16, F.S., refers to a need for immediate financial assistance, and access to legal representation, which speak to future events.[28]

Attorney Fee Award as Sanction

In 1997, the Florida Supreme Court decided *Rosen v. Rosen*, a case in which the court acknowledged that the financial resources of the parties – that is, need and ability to pay – is the primary factor for a court to consider in determining whether to award attorney fees in a dissolution of marriage, support, or time-sharing proceeding under ch. 61, F.S.[29] However, the *Rosen* Court went on to enumerate a list of other relevant factors which a court may consider in awarding such attorney fees, including:

- The litigation's scope and history;
- The litigation's duration;
- The merits of each party's respective positions;
- Whether the litigation is brought or maintained primarily to harass (or whether a defense is raised primarily to frustrate or stall); and
- The existence and course of prior or pending litigation.[30]

Subsequently, in 2002, the Florida Supreme Court decided *Moakley v. Smallwood*, a case in which the Court opined that a trial court has the inherent authority to impose attorney fees for bad faith conduct.[31] Thus, in deciding *Rosen* and *Moakley*, the Florida Supreme Court acknowledged that attorney fees may be awardable in family law matters as a sanction for vexatious or bad faith litigation; however, neither chs. 61 nor 742, F.S., codify this holding.

Further, in 2012, the Fourth DCA held that, under *Rosen*, a court may properly consider a party's refusal to accept a settlement offer in determining, and limiting, an attorney fee award under ch. 61, F.S.[32] However, in 2016, the First DCA split from the Fourth DCA on this issue, holding

[25] *Nisbeth v. Nisbeth*, 568 So. 2d 461 (Fla. 3d D.C.A. 1990); *Lochridge v. Lochridge*, 526 So. 2d 1010, 1012 (Fla. 2d D.C.A. 1988); *Blackburn v. Blackburn*, 513 So. 2d 1360 (Fla. 2d D.C.A. 1987); see, e.g., s. 61.16, F.S.
[26] *Id.*
[27] *Haslauer v. Haslauer*, 381 So. 3d 662 (Fla. 1st DCA 2024).
[28] *Id.* at 666.
[29] 696 So. 2d 697 (Fla. 1997).
[30] *Id.* at 700.
[31] 826 So. 2d 221 (Fla. 2002).
[32] *Hallac v. Hallac*, 88 So. 3d 253 (Fla. 4th DCA 2012) (noting that, under Florida law, a refusal to accept a settlement offer could not, by itself, form the basis for denying an attorney fee award altogether).

that, "while there may be special circumstances to consider in addition to the parties' financial positions when determining entitlement to attorney fees in a marital dissolution proceeding, no [statutory] authority exists for denying attorney fees [from the point of offer rejection] solely based on the failure to accept an offer of settlement."[33]

Appellate Attorney Fees

Both ss. 61.16 and 742.045, F.S., provide a "two-way" attorney fee provision based on need and ability to pay. Specifically, s. 61.16, F.S., provides that "the court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings *and appeals*."[34] Similarly, s. 742.045, F.S., provides that "the court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings." However, unlike the parallel provision in s. 61.16, F.S., the provision in s. 742.045, F.S., does not include the phrase "and appeals."[35]

In recent years, Florida's DCAs have split on the issue of whether s. 742.045, F.S., authorizes an award of appellate attorney fees – that is, attorney fees incurred in connection with an appeal of a matter originating in a trial court. The Fourth and Fifth DCAs have, broadly speaking, taken the position that, as s. 742.045, F.S., authorizes the award of such fees (where conditions pertaining to need and ability to pay are met) in "any proceeding under [ch. 742, F.S.]," and the term "proceeding" encompasses appeals, this section naturally authorizes the award of appellate attorney fees. Indeed, the Fourth DCA noted that "it is axiomatic that this [term] would include any appellate proceedings necessary to maintain or defend an action under [ch. 742, F.S.]."[36] However, the Sixth and Third DCAs have taken the opposite position, concluding that s. 742.045, F.S., does not authorize the award of appellate attorney fees and certifying conflict with the Fourth and Fifth DCAs.[37]

Interestingly, the Sixth and Third DCAs arrived at their conclusions through different analyses. The Sixth DCA focused on what it considered to be narrowing language – that is, the phrase "under [ch. 742, F.S.]" – noting that nothing in ch. 742, F.S., identifies an appeal as a proceeding "under that chapter"; indeed, the Sixth DCA noted, ch. 742, F.S., repeatedly refers to proceedings under that chapter as "circuit court proceedings" – that is, proceedings at the trial court level.[38] However, the Third DCA looked to the language of a parallel statute – s. 61.16, F.S. – which expressly authorizes the recovery of appellate attorney fees in proceedings under ch. 61, F.S.; noted the Third DCA, "for whatever reason, the Legislature has chosen not to include similar language in [s. 742.045, F.S.]."[39] The Third DCA panel then concluded that, if

[33] *Palmer v. Palmer*, 206 So. 3d 74 (Fla. 2016).
[34] Emphasis added.
[35] *Compare* s. 61.16(1), F.S., *with* s. 742.045, F.S.
[36] *Beckford v. Drogan*, 216 So. 3d 1 (Fla. 4th DCA 2017); *McNulty v. Bowser*, 233 So. 3d 1277 (Fla. 5th DCA 2018).
[37] *C.T. v. T.G.*, 397 So. 3d 219 (Fla. 6th DCA 2024); *Perez-Palm v. Rodriguez*, 2025 WL 1243790 (Fla. 3d DCA 2025).
[38] *C.T. v. T.G.*, 397 So. 3d at 221.
[39] *Perez-Palma v. Rodriguez*, 2025 WL 1243790 (Fla. 3d DCA 2025).

the Legislature had intended to authorize the award of appellate attorney fees in s. 742.045, F.S., as it did in s. 61.16, F.S., it would have done so.[40]

Establishing Appropriate Attorney Fee Award

In 2010, the Fourth DCA held that, under the provisions of ch. 61, F.S., "the need and ability to pay requirement is tantamount to a finding of entitlement of one spouse to have the other spouse pay all or a portion of that spouse's fees. To determine that need and ability, however, the amount of [the attorney fees] must also be considered. Therefore, the court in its discretion may assess fees for litigating both factors…"[41] However, in 2025, the Third DCA split from the Fourth DCA on this issue, holding that a party may not collect attorney fees incurred in establishing an appropriate attorney fee award, as such fees are not statutorily authorized.[42]

Attorney Fees in Title IV-D Cases

In "Title IV-D cases," so named because the authority for such cases stems from Title IV-D of the federal Social Security Act, the state, through the Florida Department of Revenue, seeks to enforce child support orders where a parent ordered to pay such support becomes delinquent in his or her payments, necessitating the state to provide some form of public assistance to the child or the other parent.[43] Section 61.16, F.S., currently provides that, in Title IV-D cases, *attorney fees, suit money, and costs* shall be assessed only against the non-prevailing obligor after the court makes a determination of the non-prevailing obligor's ability to pay such costs and fees. Section 742.045, F.S., meanwhile, contains a similar but more limited provision, specifying that, in Title IV-D cases, *costs* shall be assessed only against the non-prevailing obligor after the court makes a determination of the non-prevailing obligor's ability to pay such costs; the statute is currently silent as to the assessment of attorney fees and suit money against the non-prevailing obligor in such cases.

Attorney Fees in Contempt Proceedings

Florida law defines "contempt," sometimes referred to as "contempt of court," to mean a refusal by any person to obey any legal order made or given by any judge relative to any of the court's business, after due notice thereof.[44] Generally speaking, courts classify contempt as either "direct" or "indirect," with the former term referring to contempt committed in the court's presence and the latter term referring to contempt committed outside the court's presence.[45] Courts also classify contempt as either "civil" or "criminal" in nature based on the court's goal in the contempt proceeding. Generally, courts use civil contempt proceedings to compel the contemnor's future compliance with the court's order,[46] while criminal contempt proceedings punish a contemnor for failing to comply with the court's order through sanctions that may

[40] *Id.*
[41] *Schneider v. Schneider*, 32 So. 3d 151 (Fla. 4th DCA 2010).
[42] *Schultheis v. Schultheis*, No. 3D23-1250 (Fla. 3d DCA 2025).
[43] Such public assistance may include Temporary Assistance for Needy Families ("TANF"), temporary cash assistance, foster care, Medicaid, or food assistance benefits. Section 409.2563(2)(f), F.S.
[44] Section 38.23, F.S.
[45] *Demetree v. State*, 89 So. 2d 498, 501 (Fla. 1956); *Ex Parte Earman*, 95 So. 755, 760 (Fla. 1923); *Kress v. State*, 790 So. 2d 1207, 1208-1209 (Fla. 2d DCA 2001); *Forbes v. State*, 933 So. 2d 706, 711 (Fla. 4th DCA 2006).
[46] In other instances, a contemnor may avoid civil contempt sanctions where the court finds that such person does not presently have the ability to comply with the court's order. *Akridge v. Crow*, 903 So. 2d 346, 350 (Fla. 2d DCA 2005).

include jail time.[47] Given that a criminal contempt charge implicates liberty interests, a person so charged has a right to the same protections afforded to criminal defendants under the Fourteenth Amendment's Due Process Clause; however, a person charged with civil contempt has fewer protections – that is, a person so charged only has a right to a proceeding that meets the "fundamental fairness" requirements of the Due Process Clause, which requirements generally include notice and an opportunity to be heard.[48]

Section 61.16(2), F.S., provides that, in a criminal contempt proceeding arising out of contempt in a dissolution of marriage, support, or timesharing proceeding brought under ch. 61, F.S., whether classified as "direct" or "indirect" contempt, the court may, in addition to appointing an attorney to prosecute said contempt:

- Assess attorney fees against the contemnor if the court determines that the contemnor has the ability to pay such fees; and
- Order that the fees awarded be paid directly to the attorney, who may enforce the order in his or her name.

However, s. 742.045, F.S., contains no similar provision; this statutory difference may cause the courts to reasonably assume that they lack the authority to assess attorney fees in a criminal contempt proceeding arising out of contempt in a determination of parentage proceeding brought under ch. 742. F.S. Further, neither s. 61.16, F.S., nor s. 742.045, F.S., give courts the authority to award attorney fees to a party who files and prevails on a motion for civil contempt in connection with a proceeding brought under either chs. 61 or 742, F.S.

Attorney Fees in Enforcement Actions

Where a party to a civil proceeding disregards a court order, the aggrieved party may bring an "enforcement action" to ask the court to direct the non-compliant party to obey the order; the action is not punitive in nature and differs from a contempt proceeding in that an enforcement action generally does not involve the imposition of legal penalties. Section 61.16, F.S., provides that, in those dissolution of marriage, support, or time-sharing cases in which an enforcement action is brought and the court finds that the non-compliant party lacks justification in his or her refusal to follow the court order at issue, the court must not award attorney fees to the noncompliant party; in other words, the court must disregard the equity standard based on need and ability to pay in such circumstances. However, s. 742.045, F.S., pertaining to determination of parentage proceedings, lacks a corresponding provision; thus, it is possible that a court may award attorney fees to a non-compliant party in those determination of parentage proceedings in which an enforcement action is brought, even if the court finds that the non-compliant party lacks justification in his or her refusal to follow the court order at issue.

Florida Vexatious Litigant Law

Troublesome, or "vexatious," litigants create chaos in Florida's court system by repeatedly abusing the judicial process, generating significant work for judges and court personnel and

[47] *Demetree*, 89 So. 2d at 501; *Gregory v. Rice*, 727 So. 2d 251 (Fla. 1999); *The Florida Bar v. Taylor*, 648 So. 2d 709 (Fla. 1995).
[48] *Bresch v. Henderson*, 761 So. 2d 449 (Fla. 2d DCA 2000); *Akridge*, 903 So. 2d at 350; *Gregory*, 727 So. 2d at 253; *Dept. of Children & Families v. R.H.*, 819 So. 2d 858 (Fla. 5th DCA 2002).

diverting judicial resources away from legitimate disputes. Further, parties that find themselves litigating against a vexatious litigant will likely have to expend significant time and resources to resolve the case.[49] Vexatious litigation can take many forms, including:

- Filing multiple meritless lawsuits;
- Attempting to relitigate matters already decided by the court; and
- Submitting documents with harassing, scandalous, or sham materials to the court.[50]

To address such conduct, the Legislature enacted the Florida Vexatious Litigant Law, codified in s. 68.093, F.S.

Vexatious Litigant Defined

Under s. 68.093(2), F.S., "vexatious litigant" means a person, as defined in s. 1.01(3), F.S.,[51] proceeding *pro se* – a person without legal representation[52] – who:

- In the immediately preceding 7-year period, has commenced, prosecuted, or maintained, *pro se*, five or more actions in any court that have been finally and adversely determined against such person;[53]
- After an action has been finally and adversely determined against the person, repeatedly relitigates or attempts to relitigate an aspect of the case;
- Repeatedly files pleadings, requests for relief, or other documents on which the court has already ruled;
- Repeatedly files unmeritorious pleadings; conducts unnecessary discovery; or engages in other tactics that are frivolous or solely intended to cause unnecessary delay in any action; or
- Has been previously found to be a vexatious litigant in any state or federal court.

An action is not deemed to be "finally and adversely determined," for the purposes of this definition, during a pending appeal.

Security Requirements Related to a Vexatious Litigant

Under s. 68.093(3), F.S., a litigant may file a motion asking the court to order the opposing party to furnish security[54] to the moving party on the grounds that such opposing party is a vexatious litigant and not likely to win his or her claims against the moving party. At the hearing on the motion, the court must consider any evidence that may be relevant to the motion, and if after hearing the evidence, the court determines that the opposing party is indeed a vexatious litigant and is not reasonably likely to win his or her claims against the moving party, the court must

[49] Workgroup on Vexatious Litigants, *Final Report and Recommendation*, (Sept. 6, 2024), https://flcourts-media.flcourts.gov/content/download/2446359/file/Workgroup%20on%20Vexatious%20Litigants%20Final%20Report%209-6-24%20Amended%20-%20Accessible.pdf (last visited Feb. 15, 2026); *Smith v. Fisher*, 965 So. 2d 205, 209 (Fla. 4th DCA 2007) (providing that "in a frivolous lawsuit, justice delayed is justice denied to a defendant who expends time and money to bring the case to an end.").

[50] Workgroup, *supra* note 49.

[51] Under this section, the word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries corporations, and all other groups or combinations.

[52] Legal Information Institute, *Pro Se*, https://www.law.cornell.edu/wex/pro_se (last visited Feb. 15, 2026).

[53] An action may not be included in the total count where the litigant commenced, prosecuted, or maintained the action in good faith.

[54] "Security" means an undertaking by a vexatious litigant to ensure payment to a party in an amount reasonably sufficient to cover the party's anticipated, reasonable litigation expenses, including attorney fees and costs. Section 698.093(2), F.S.

then order the vexatious litigant to furnish security to the moving party in an amount and within such time as the court deems appropriate. If the vexatious litigant fails to post the required security and is:

- A plaintiff, the court must immediately dismiss the action with prejudice[55] as to the moving party for whose benefit the security was ordered; or
- A respondent, the court may immediately impose one or more of the following sanctions, as appropriate:
  - Denial of the vexatious litigant's request for relief;
  - Striking of the vexatious litigant's pleading or other document from the record; or
  - Rendition of a default judgment[56] against the vexatious litigant.

Prefiling Orders Related to a Vexatious Litigant

Section 68.093(4), F.S., authorizes the court in any judicial circuit to, on its own motion or on the motion of any party, enter a "prefiling order" prohibiting a vexatious litigant from commencing, *pro se*, any new action in the courts of that circuit without first obtaining leave of the court – that is, without first obtaining permission to file the action. The court may grant such leave only upon a showing that the proposed action is meritorious and is not being filed for the purpose of delay or harassment and may condition the filing of the proposed action upon the furnishing of security.

Section 68.093(6), F.S., requires the clerk of the court to provide copies of all prefiling orders to the Clerk of the Florida Supreme Court, who must maintain a vexatious litigant registry. Further, under s. 68.093(5), F.S., the clerk of the court may not file any new action by a *pro se* vexatious litigant against whom the court has entered a prefiling order unless the vexatious litigant has obtained an order from the court allowing such filing. If the clerk of the court mistakenly allows a *pro se* vexatious litigant to file any new action in contravention of a prefiling order, any party to that action may file with the clerk and serve on the vexatious litigant a notice stating that the vexatious litigant is subject to a prefiling order. The filing of the notice automatically stays the litigation against all parties to the action, and the court must automatically dismiss the action with prejudice within 10 days after the filing of the notice unless the vexatious litigant files a motion for leave to file the new action. If the court grants leave, the pleadings or other responses to the complaint are not due until 10 days after the date the vexatious litigant serves the party with a copy of the order granting leave.

Attorney Fees Related to a Vexatious Litigant

Section 68.093(8), F.S., specifies that any relief provided under Florida's Vexatious Litigant Law is cumulative to any other relief or remedy available under Florida law or applicable court rules. The additional relief that may be available to a party dealing with a vexatious litigant includes attorney fees awardable as a sanction under s. 57.105, F.S., for frivolous litigation.

[55] When a court dismisses an action "with prejudice," the plaintiff cannot refile the same action in that court. Legal Information Institute, *With Prejudice*, https://www.law.cornell.edu/wex/with_prejudice (last visited Jan. 22, 2026).
[56] A "default judgment" is a judgment automatically entered by a court in favor of one party and against the other party, typically due to one party's failure to do something, such as respond to a pleading or appear in court. Legal Information Institute, *Default Judgment*, https://www.law.cornell.edu/wex/default_judgment (last visited Jan. 22, 2026).

Attorney Fee Sanctions Under s. 57.105, F.S.

To deter the filing of frivolous litigation, the Legislature enacted s. 57.105, F.S., which generally authorizes a court to award attorney fees as a sanction against a party who raises a claim that is unsupported by law or facts or takes some action primarily for the purpose of causing unreasonable delay in the proceedings. Any party to a civil action may seek such sanctions by serving the offending party with a copy of a motion for sanctions; however, the party seeking sanctions may only file said motion with the court if, after 21 days from the date of service, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. Thus, s. 57.105, F.S., provides a "safe harbor" under which an offending party may avoid the imposition of sanctions by taking corrective action. In certain instances, this may leave the aggrieved party without a remedy to recover his or her attorney fees incurred in defending against or otherwise necessarily responding to the frivolous litigation.

Retroactivity of Legislation

In determining whether a law may apply retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.[57] A purely procedural or remedial law may apply retroactively without offending the Constitution,[58] but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.[59] However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation or duty, or imposes a new penalty.[60] Further, if a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively if doing so "would attach new legal consequences to events completed before its enactment."[61]

The Florida Supreme Court, noting that the American Rule adopted in Florida requires each party to a lawsuit to pay his or her own attorney fees unless a statute or contract provides otherwise, has found that a statutory requirement for one party to pay another party's attorney fees is "a new obligation or duty," and is therefore substantive in nature.[62] Courts considering the application of statutory attorney fee provisions have generally held that those provisions only apply prospectively, as the applicable law when dealing with substantive rights is the law in effect at the time of the operative event.[63]

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[57] A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).

[58] Constitutional provisions which the retroactive application of law may offend include the Contracts and Due Process Clauses. *See Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388 (Fla. 5th DCA 2002); *see also Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010); U.S. Const. art. I, §10 and amend. XIV; Art. I, ss. 9 and 10, Fla. Const.

[59] *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

[60] *Menendez,* 35 So. 3d at 877.

[61] *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).

[62] *Young v. Altenhaus*, 472 So. 2d 1152 (Fla. 1985).

[63] *See, e.g., Brodose v. School Bd. of Pinellas County*, 622 So. 2d 513 (Fla. 2d DCA 1993); *see also Parrish v. Mullis*, 458 So. 2d 401 (Fla. 1st DCA 1984).

III. Effect of Proposed Changes:

CS/SB 644 amends laws related to attorney fee awards in family law and paternity cases.

Attorney Fees and Costs in Family Law Disputes

Prospective and Retroactive Attorney Fee Awards

To address a First District Court of Appeal ("DCA") split on the question of whether a court may award attorney fees in certain family law disputes retroactively as a form of equitable reimbursement or as a sanction, the bill amends s. 61.16, F.S., (pertaining to attorney fee awards in dissolutions of marriage, support, and time-sharing proceedings under ch. 61, F.S.) and s. 742.045, F.S., (pertaining to attorney fee awards in determination of parentage proceedings under ch. 742, F.S.), to expressly state that a court may award attorney fees "retroactively and prospectively [in proceedings under either chapter] as equity requires."

Attorney Fee Award as Sanction

The bill amends ss. 61.16 and 742.045, F.S., to codify the factors enumerated by the *Rosen* and *Moakley* Courts, which generally allow a court to impose, limit, or deny an attorney fee award where one party engages in vexatious or bad faith litigation in certain family law matters. Specifically, the bill provides that, if a party "engages in vexatious or bad faith litigation" in a dissolution of marriage, support, time-sharing proceeding under ch. 61, F.S., or a determination of paternity proceeding under ch. 742, F.S., the court may:

- Award attorney fees, suit money, and costs as a sanction against the opposing party; or
- Deny or reduce an award of attorney fees, suit money, and costs to the offending party.

Under the bill, an order entered addressing vexatious or bad faith litigation in a covered dispute must include written findings identifying the specific conduct the offending party engaged in and the reasons the court granted, denied, or reduced fees, money, and costs.

Further, to address a DCA split on whether a court may consider the rejection of a good faith settlement offer in limiting attorney fee awards in certain family law disputes, the bill amends ss. 61.16 and 742.045, F.S., to expressly provide that, in determining entitlement to, and the amount of, an award of attorney fees under either section, whether incurred at the trial court or appellate court level, the court may consider whether either party to the relevant proceeding rejected a good-faith settlement offer.

Appellate Attorney Fees

To address a DCA split as to whether s. 742.045, F.S., authorizes appellate attorney fee awards in determination of parentage proceedings under ch. 742, F.S., the bill amends s. 742.045, F.S., to expressly authorize the award of appellate attorney fees in such proceedings. Further, the bill incorporates two provisions pertaining to appellate attorney fees in current s. 61.16, F.S., pertaining to dissolution of marriage, support, and time-sharing proceedings, into s. 742.045, F.S. Specifically, the bill amends s. 742.045, F.S., to specify that:

- The trial court has continuing jurisdiction to make temporary attorney fee awards reasonably necessary to prosecute or defend an appeal on the same basis and criteria as though the matter were pending before it at the trial level.

- In determining whether to make attorney fee awards at the appellate level, the court must primarily consider the parties' relative financial resources – that is, need and ability to pay – unless an appellate party's cause is deemed to be frivolous.

These changes, taken together, make the authority for courts to award appellate attorney fees consistent as between s. 742.045, F.S., and the parallel provision in s. 61.16, F.S.

Establishing Appropriate Attorney Fee Award

To address a DCA split on whether attorney fees incurred in establishing an appropriate attorney fee award in certain family law disputes may be included in the total attorney fee award, the bill amends s. 61.16, F.S., (pertaining to attorney fee awards in dissolution of marriage, support, and time-sharing proceedings under ch. 61, F.S.) and s. 742.045, F.S., (pertaining to attorney fee awards in determination of parentage proceedings under ch. 742, F.S.) to expressly provide that such fees may be included in the total attorney fee award under either section.

Priority of Support over Attorney Fees

Sections 61.16 and 742.045, F.S., currently allow an attorney for a party to directly collect an attorney fee award from the opposing party. The bill amends both provisions to require that payment of support owed to the obligee has priority over the fees, costs, and expenses awarded.

Retroactivity

The bill provides that the amendments made to ss. 61.16 and 742.045, F.S., by the bill apply to any action, including those initiated by a supplemental petition, filed on or after the bill's effective date.

Effective Date

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Determining the fiscal impact of this bill is highly speculative. The bill may decrease the cost of litigating family law and paternity matters by individuals who prevail in those actions and correspondingly increase the cost of litigating family law and paternity matters by individuals who do not prevail. The bill may lead to an overall increase in the cost to families if the bill has the effect of incentivizing litigation or may decrease costs by discouraging frivolous and weak claims. The bill may increase revenues for attorneys, law firms, and litigation service providers who practice in the areas of family law and paternity or may lower revenues if the increased risk of higher costs causes litigants to forgo weaker claims.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.16 and 742.045.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on February 11, 2026:
The amendment resulting in the committee substitute added that, if an attorney may directly pursue collection of an attorney fee award from the opposing party in a family law case, payment of support owed to an obligee has priority over the payment of fees, costs and expenses. The amendment also removed a provision allowing a court to award attorney fees against a party who through the use of an attorney engaged in vexatious or

bad faith litigation. Finally, the amendment removed a provision that would have made the bill apply to cases pending or filed on the effective date of the bill.

B. Amendments:

None.